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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/789,776

02/27/2004

James Say

TS-02-24

1912

30349

7590

04/03/2009

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EXAMINER

NATNITHADHA, NAVIN

ART UNIT

PAPER NUMBER

3735

NOTIFICATION DATE

DELIVERY MODE

04/03/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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|------------------------------|---|-----------------------------------|--|
| Office Action Summary | Application No. 10/789,776 | Applicant(s) SAY ET AL. | |
| | Examiner NAVIN NATNITHITHADHA | Art Unit 3735 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. According to the Amendment, filed 13 January 2009, the status of the claims is as follows:

Claims 1 and 7 are previously presented;

Claims 2-5 and 8-39 are as originally filed; and

Claims 6 and 40-53 are cancelled.

Response to Arguments

2. Applicant's arguments, see Remarks, pp. 8-12, filed 13 January 2009, with respect to the rejection of claims 1-5 and 7-39 under 35 U.S.C. 103(a) as being unpatentable over Schulman et al, U.S. Patent No. 6,088,608 A ("Schulman"), in view of Sackner et al, U.S. Patent No. 6,047,203 A ("Sackner"), have been fully considered, and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Say et al, U.S. Patent No. 6,175,752 A ("Say"), as discussed below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3735

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 and 7-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Say et al, U.S. Patent No. 6,175,752 A ("Say").

Claims 1-5 and 7-39: Say teaches the following:

A continuous glucose monitoring system (see Abstract and figs. 1, 18A, 18B, 22, 25), comprising:

a sensor 42 configured to detect one or more glucose levels;

a transmitter 98 operatively coupled to the sensor 42, the transmitter 98 configured to receive the detected one or more glucose levels, the transmitter 98 further configured to transmit signals corresponding to the detected one or more glucose levels; and

a receiver 46 or 48 operatively coupled to the transmitter 98 configured to receive transmitted signals corresponding to the detected one or more glucose levels;

wherein the transmitter 98 is configured to transmit three data points per minute to the receiver, said three data points corresponding to the detected one or more glucose levels (see col. 4, l. 54 to col. 45, l. 7);

wherein said three data points include a current data point and two previous data points, wherein the current data point corresponds to a current glucose level, and wherein the two previous data points include two consecutive glucose levels, said one of the two consecutive glucose levels immediately preceding the current glucose level (see col. 4, l. 54 to col. 45, l. 7);

wherein the receiver is operatively coupled to the transmitter via an RF communication link (see col. 41, l. 66, to col. 52, l. 18);

wherein the transmitter is configured to encode the detected one or more glucose levels received from the sensor to generate encoded signals, the transmitter further configured to transmit the encoded signals to the receiver, wherein the receiver is configured to decode the encoded signals received from the transmitter, wherein the transmitter is configured to transmit the encoded signals to the receiver at a transmission rate of one data point per minute (see col. 49, ll. 15-67);

wherein the receiver 46 or 48 includes an output unit 154 for outputting the received transmitted signals corresponding to one or more glucose levels, wherein the output unit 154 includes a display unit 154 for displaying data corresponding to said one or more glucose levels, wherein the display unit 154 includes one of a LCD display, a cathode ray tube display, and a plasma display, wherein the displayed data includes one or more of an alphanumeric representation corresponding to the one or more glucose levels, a graphical representation of the one or more glucose levels, and a three- dimensional representation of the one or more glucose levels, wherein the display unit 154 is configured to display the data corresponding to the one or more glucose levels substantially in real time (see figs. 22-24, and col. 48, l. 4, to col. 51, l. 28);

wherein the output unit includes a speaker for outputting an audio signal corresponding to said one or more glucose levels (see col. 30, ll. 10-13);

wherein the receiver 46 or 48 is configured to store an identification information corresponding to the transmitter (see col. 49, ll. 15-67);

wherein the receiver is further configured to perform a time hopping procedure for synchronizing with the transmitter;

wherein the receiver is configured to synchronize with the transmitter based on the signal strength detected from the transmitter, wherein the detected signal strength exceeds a preset threshold level (see col. 42, ll. 31-55);

wherein the transmitter is encased in a substantially water tight housing 45 (see col. 30, l. 64, to col. 31, l. 21); and

wherein the transmitter includes a disable switch 111 for temporarily disabling the transmission of the signals.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The other patents cited in the PTO-892 teach subject matter related to the Applicant's claims. The Examiner suggests reviewing these patents before responding to the present Office Action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAVIN NATNITHITHADHA whose telephone number is (571)272-4732. The examiner can normally be reached on Monday-Friday, 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Navin Natnithithadha/
Patent Examiner, Art Unit 3735
03/30/2009